

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

T.N.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2011040135

DECISION

This matter was heard by Nancy Beezy Micon, Administrative Law Judge with the Office of Administrative Hearings, on November 1, 2011, at the North Los Angeles County Regional Center, in Van Nuys, California.

T.N. (Claimant) was represented by her mother, who is Claimant's authorized representative.¹ North Los Angeles County Regional Center (NLACRC, Regional Center or Service Agency) was represented by Ruth Janka, Contract Administrator for NLACRC.

Oral and documentary evidence was received, and argument heard. The record was closed, and the matter submitted for decision on November 1, 2011.

ISSUE

The parties agreed that the following issue is the sole issue to be resolved:

Is Claimant eligible to receive Regional Center services within the meaning of the

¹ Initials have been used to protect Claimant's privacy.

Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code² section 4500 et seq. (Lanterman Act), as a person who has Autism?

FACTUAL FINDINGS

1. Claimant is 24 years old.
2. Regional Center determined that Claimant does not meet the criteria to be eligible for services because she does not suffer from any qualifying developmental disability, as set forth in Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000. Based on this determination, NLACRC denied services to Claimant, and Claimant requested a fair hearing.
3. Claimant lives at home with her parents; she has three younger siblings.
4. Claimant has received numerous psychological evaluations and psycho-educational assessments throughout her life. The first psychological assessments in the record dates from when Claimant was age 12. All of the assessments conducted before Claimant reached the age of 18 resulted in diagnoses of conditions which are not considered developmental disabilities.

RECORDS PERTAINING TO CLAIMANT **BEFORE** SHE REACHED AGE 18

Child & Family Guidance Center Child/Adolescent Initial Assessment - 12/9/99

5. Claimant, at age 12, was referred by her pediatrician to the Child & Family Guidance Center of the Los Angeles County Department of Mental Health (CFGC) for an assessment to determine Claimant's need for medication. The referral notes indicate that Claimant was diagnosed with attention deficit hyperactivity disorder (ADHD) at age six and took medication through grade six. The assessor observed that Claimant made "[g]ood eye contact, relates well to [f]ather and is somewhat oppositional with [m]other. [Claimant r]elates well to therapist." Claimant's speech was found to be appropriate. She was attentive and able to focus on the content of the session. Claimant's intelligence appeared to be above average. She was described as being "somewhat anxious, fidgety." Claimant's attitude was found to be "[c]ooperative, insightful, motivated for treatment." In a summary of the assessment, the assessor wrote: [Claimant] is a 12 year old girl who was diagnosed as having ADHD when she was 6 years old. She stopped taking medication last year due to adverse effects. Since starting Middle School, she has been experiencing academic difficulties as well as rejection by her peers. Her symptoms appear reactive to ADHD, to the high expectations of her parents as well as to the beginning adolescent struggle for

² All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

separation/individuation.” The assessor for CFGC diagnosed Claimant with “ADHD-Combined type.”

Psychological Assessment Report of Examination 12/19/00, 1/9/01, and 1/16/01

6. Esther R. Walsh, M.S.W., Claimant’s therapist at CFGC, referred Claimant, at age 13 and six months, for testing to determine whether Claimant might have a learning disability because Claimant’s grades had been declining. Claimant was examined on December 19, 2000, January 9, 2001, and January 16, 2001. Phoebe S. Moore, M.A., Psychology Intern, prepared a psychological assessment report, based on these examinations, which contains the following background information pertaining to Claimant:

[Claimant] has been in treatment at CFGC since December of 1999. She completed a 10-week social skills group and is currently in individual/family treatment with Ms. Walsh. Her current symptoms include inattention, hyperactivity, impulsivity, vocal tics (sniffing), and compulsive, ritualistic behaviors. [Claimant] was diagnosed with ADHD and prescribed Ritalin in kindergarten, which she took until grade 6. Currently, [Claimant] is medicated with Paxil, Adderall, and Clonidine.

Ms. Walsh reports that [Claimant’s] parents are concerned about her plummeting grades and poor social skills. [Claimant’s] academic performance has been excellent up until grade 7, when her grades began to slip. . . . [Claimant] also struggles with peer relationships. She has a number of habits or rituals, including hair pulling, picking at her skin, and sniffing loudly, that irritate other children. Additionally, she seems to be socially somewhat immature and unsure of how to initiate and maintain a friendship.

Claimant was administered seven standardized tests, including the Wechsler Intelligence Test for Children, Third Edition (WISC-III) and the Wechsler Individual Achievement Test (WIAT). In terms of cognitive functioning, it was determined that Claimant fell in the superior range. Claimant’s full scale intelligence quotient (IQ) was found to be 128. It was determined that Claimant did not have a learning disability. Claimant’s main weakness was found to be “in integrating parts into a meaningful whole.” It was noted that this problem is not unusual in children with ADHD. Claimant was found to display obsessive compulsive symptoms. She was diagnosed with ADHD (by previous report), Impulse-Control Disorder NOS, and Chronic Vocal Tic Disorder. She was also diagnosed on Axis IV as having poor peer relationships. The examiner made recommendations, including referrals to treatment and social skills programs at University of California, Los Angeles (UCLA).

UCLA Neuropsychiatric Institute and Hospital; Adolescent and Child Evaluation Services Intake Evaluation, Child & Adolescent OCD and Anxiety Program – 1/25/01

7. Claimant, at age 13 and seven months, was referred to the Child and Adolescent OCD and Anxiety Program at UCLA for an evaluation and treatment recommendations concerning Claimant's tics and obsessive compulsive disorder (OCD) symptoms. During the intake evaluation, Claimant's father reported that Claimant had several tics, including sniffing and throat clearing. When taken off medication, she also developed additional tics, including yelping and humming. It was also reported that Claimant scratched her head, picked at resulting scabs, and ate scabs and hair pulled in the process of picking the scabs. It was noted that Claimant was socially immature and had difficulty initiating and maintaining friendships. Claimant's symptoms were causing problems for her at school. At home, Claimant was reported as being "obsessed" with her younger sister. She engaged in hoarding behavior. Claimant's father reported that Claimant was taking medication and receiving individual therapy for treatment of Tourette's Disorder and for depression. The intake evaluator diagnosed Claimant with Transient Tic Disorder and Attention Deficit Disorder.

Los Angeles Unified School District (LAUSD) Psycho-Educational Assessment Report

8. On April 9, 2001, Claimant, at age 13 and 10 months, underwent a psycho-educational assessment through her local school district to determine her level of intellectual and adaptive functioning for educational planning and placement. Claimant was administered several tests, including the Learning Efficiency Test II (LET-II), the Matrix Analogies Test – Expanded Form, the Wide Range Achievement Test-Revised (WRAT-R), the Kaufman – Test of Educational Achievement (KTEA), a Sentence Completion Test of Auditory-Perceptual Skills Upper Level, the Beery Test of Visual-Motor Integration – Second Edition (VMI), and Test Session Behavior. Claimant was observed in the classroom, her school records and previous assessment records were reviewed, and Claimant and her father were interviewed. Claimant's father reported that Claimant "obtained all developmental milestones within an appropriate time range." Claimant was determined to meet eligibility criteria for special education as a student who is "Other Health Impaired (OHI)." The school psychologist wrote: "This is due to the fact that her documented diagnosis of Obsessive Compulsive Disorder (OCD), Tourette's syndrome, and Attention Deficit Disorder with Hyperactivity are impacting [her ability] to learn and be successful at this time. [Claimant] is struggling with social skills and peer relationships. This has been documented since kindergarten."

LAUSD Individualized Education Program (IEP) – 05/07/01

9. An initial Individualized Education Program (IEP) meeting on May 7, 2001, when Claimant was age 13 and in grade eight at St. Nicholas school, noted that Claimant met developmental milestones in normal parameters, with the exception of speech, which was early. Claimant was expected to meet grade level standards, with instructional modifications and accommodations. She was eligible to receive counseling services. The IEP team also

considered a non-public school (NPS) placement for Claimant, noting: “She has some disabilities which impact her ability to learn. She has OCD and doesn’t seem to be able to keep peer relationships. She has ADHD and poor impulse control therefore making it difficult to place her on an LAUSD campus.”

CFGC Psychiatric Evaluation – 8/2/01

10. Sarla Karan, M.D., a consulting psychiatrist for CFGC, conducted a psychiatric evaluation of Claimant when Claimant was age 14.³ As part of the evaluation, Dr. Karan reviewed Claimant’s CFGC chart, and interviewed Claimant and Claimant’s mother. Claimant’s mother reported that Claimant exhibited symptoms of inattention, distractibility, poor concentration, OCD, school problems, depression, and anger problems. Claimant had been violent with her parents, and had physically attacked her sister. Dr. Karan diagnosed Claimant with Tourette’s Disorder, ADHD, Combined Type, and OCD. She recommended that Claimant continue with her medication regimen, although possibly with higher doses, that Claimant continue with individual therapy, and receive cognitive behavior therapy to help control her OCD symptoms.

LAUSD IEP; NPS Student Report Card of IEP Progress – 4/3/02

11. Claimant began attending Village Glen, a NPS whose population included students who have developmental disabilities, in grade nine. An annual IEP meeting held in April 2002 found that Claimant was developing friendships at Village Glen, and was performing well academically. Claimant was receiving 30 minutes of counseling services each week. She was working on goals related to social skills and peer interactions, and was found to be making progress on these goals. Claimant was also found to have “improved dramatically on decreasing ritualistic behaviors. She is REALLY trying. She is aware of the behavior and will refrain from it. Every day reflects progress.” Nevertheless, Claimant was referred to the County of Los Angeles Department of Mental Health (DMH) for an AB3632 Mental Health Assessment, which took place on May 6, 2002, when Claimant was age 14.

DMH AB 3632 Mental Health Assessment – 5/6/02

12. DMH found that Claimant qualified for mental health services under AB3632. The following services were recommended on an outpatient basis: individual therapy, family therapy, group therapy, medication evaluation and follow-up by a psychiatrist. The treatments goals included: reduction of skin and cloth picking; improvement of peer relationships; and maintenance of absence of vocal ticks. Kristen Freund LCSW, the DMH Assessor, wrote: “Due to [Claimant’s] history of difficulties with social interactions,

³ Heike Ballmaier, Ph.D., NLACRC’s expert witness, noted that she has known Dr. Karan for many years. According to Dr. Ballmaier, Dr. Karan has experience with clients who have Autism and would have recognized Autism in a person undergoing a psychiatric evaluation with her in 2002.

compulsive behaviors, and the somewhat obsessive nature of her interests, it is the opinion of this assessor that [Claimant's] symptoms may suggest a developmental disorder. Therefore, it may be beneficial for [Claimant] to have further evaluation by the Regional Center.”⁴

Alton School NPS Progress Report – 10/22/02

13. Claimant's family moved to Long Beach, and Claimant began attendance at Alton School, a NPS in the Long Beach Unified School District (LBUSD). A report was completed concerning Claimant's progress at the Alton School when Claimant was age 15 and in grade 10 at the Alton School. Claimant was found to be above grade level in all areas of reading. She performed at her grade equivalent in the areas of spelling, written language, and math. It was noted that she had good study skills and time management. The only area of weakness noted was Claimant's social/emotional skills. Claimant was found to be a hard worker with a good attitude and likeable personality but needed improvement in making good choices, accepting criticism, and interacting with her peers. She needed continued help on the goal of decreasing ritualistic behaviors.

LBUSD IEP and Counseling Progress Report – 10/23/02

14. An IEP, dated October 23, 2002, found Claimant eligible for continued special education services under the OHI category.⁵ Under a heading entitled “Present Levels of Educational Performance,” Claimant was noted to be “above average in all academic areas tested,” “has age appropriate communication,” “has an on-campus job once a week washing trays,” “health appears to be fine,” and “has age appropriate motor skills.” The only area of weakness was in the “behavioral/social-emotional” category which stated that Claimant exhibited OCD “repetitive behaviors in response to an urge.” Claimant was given goals under the “behavioral/social-emotional” category with the objective to “refrain from teasing and be considerate of other[s'] disabilities.” In a counseling progress report, it was noted that Claimant “appears to be responding well to the structure and support at Alton School.” It was recommended that Claimant continue the NPS placement with 60 minutes of weekly counseling.

Student Report Cards at Alton School

15. Claimant received “A” and “B” grades at the Alton School between the Spring 2003 semester and summer 2004 enrollment.

⁴ There is no evidence in the record that, in response to the assessor's opinion, Claimant was evaluated by a regional center in 2002. According to the current record, Claimant was first assessed by a regional center at age 23.

⁵ One of the eligibility choices was for the category “Autism” but the “OHI” box was instead marked as the primary reason Claimant qualified for special education services.

Alton School; Counseling Progress Report of Educational Performance – 11/19/03

16. Claimant's annual goal at the Alton School was to "[i]ncrease appropriate expression/communication to improve relationships as evidence[d] by increasing interactions with others." It was found Claimant increased her interactions by participating in a class play, interacting with others at lunch, and occasionally participating in the recreation room. It was noted that Claimant began taking some classes at a local community college and was taking pride in this accomplishment. Claimant's teacher reported concerns about Claimant "not responding appropriately, not showing common sense, speaking out, silliness and lethargy." It was recommended that Claimant continue attendance at NPS with an hour of weekly counseling.

LBUSD IEP – 11/24/03

17. An annual IEP was conducted by LBUSD when Claimant was age 16 in grade 11 at Alton School. Claimant was still found eligible for special education services under the OHI category. She was taking medications (Strattera, Prozac, and Haloperadol) to address ADHD, depression, and compulsive behaviors. Under a heading on "vocational functioning," it was noted that Claimant was taking a career class and a physical education class at a local college, that Claimant liked math and reading but did not like writing. Claimant was involved in a church youth program. She wanted to become an elementary teacher and had accepted a position at the Alton School as a school tutor. Claimant's cognitive ability was estimated to be in the high average to superior range, and she was at or above grade level in all subjects.

LBUSD Triennial Assessment Summary – 4/9/04

18. Nettie Miller, a school psychologist, completed an assessment for the LBUSD when Claimant was age 16 years and 10 months in grade 11 at Alton School. The assessment procedures included a student interview, review of records and teacher reports. The following history provided background information on Claimant's education:

[Claimant] attended school in Wausau, Wisconsin from kindergarten to fourth grade. She attended a Gifted and Talented program in third grade. During her fourth grade year, she moved to Los Angeles. She subsequently attended a private Greek Orthodox school from fifth through eighth grade. [Claimant] was diagnosed with [ADHD] in first grade and was treated with medication. At age 13, [Claimant] was treated with medication therapy for verbal tics (humming, sniffing, clearing her throat, yelling). However, social relationships appeared to deteriorate. She developed several compulsive behaviors. Her academic achievement declined. In May 2001, [Claimant] qualified for Special Education services based on the eligibility of [OHI]. She was placed at Village Glen [NPS] for ninth grade. She received weekly counseling at Village Glen. [Claimant] enrolled at Alton [NPS] on 9-4-

02, as a tenth grader.

Claimant, at this time, was found to engage in inappropriate behaviors in social situations, had difficulty with organizational skills, demonstrated compulsive behaviors, and appeared impulsive and immature.

Alton School DIS Counseling Progress Report – 6/3/04

19. Minda Roseman, M.F.T., prepared a counseling report for the Alton School on June 3, 2004. It was noted that Claimant was responding well to the support and structure of the Alton School. It was recommended that one hour of weekly counseling sessions continue.

Alton School NPS Progress Report – 6/5/04

20. A progress report, dated June 5, 2004, was prepared when Claimant was almost age 17 and in grade 11 at Alton School. Claimant was given goals in the following categories: written language/communication skills (to write reports and essays that show critical relationship between elements, compare and contrast elements and use exposition to support a central theme); study skills/work habits (to track assignments utilizing a planner 90 percent of the time); and social/emotional skills (to identify inappropriate responses, shift focus and develop strategies for using appropriate responses when given a social situation using subtle teacher cues). It was noted that Claimant's academic productivity was decreasing because Claimant had "become very social in class." Claimant was found proficient and no goals were given in the areas of reading skills, math skills, career/vocational, and independent living skills.

LBUSD IEP – 6/6/05

21. An "exit" IEP was completed by the LBUSD when Claimant was age 17 in grade 12 at Alton School. In the category of present educational performance, it was noted that Claimant's descriptive writing skills had improved significantly. She had written several creative essays that exhibited "very good organization and mechanics." She was found to be less resistant to completing writing assignments. The following comment was given in the area of behavioral/social emotional performance: "While some of her behaviors are still somewhat immature, overall [Claimant's] behaviors in social situations have become more age appropriate. With slight visual cues she discontinues inappropriate behavior and assumes a more age appropriate attitude." There were no speech or language concerns. Motor skills were found to be age appropriate. Claimant had met all of her IEP goals. She had completed a class in early childhood education at a local college and worked in a preschool. She had a valid driver's learning permit. In the IEP meeting summary, it was noted that Claimant was no longer taking medication. It was projected that Claimant would graduate high school with a diploma. Claimant had passed the California high school exit examination. Claimant expressed interest in attending Long Beach City College.

RECORDS PERTAINING TO CLAIMANT AFTER SHE REACHED AGE 18

College of the Canyons; Student Health Center-Psychological Services
Initial Interview - 3/19/09

22. At age 21, Claimant referred herself to the student health center at College of the Canyons for psychological services. It was noted during the initial interview that diagnoses for PDD and OCD needed to be ruled out.

Psychological Evaluation by Efrain A. Beliz, Jr., Ph.D. – 12/08/10

23. Claimant was assessed for eligibility by the Regional Center on December 8, 2010, when she was approximately age 23. Regional Center referred Claimant to Efrain A. Beliz, Jr., Ph.D. (Beliz), a consulting psychologist, to assess Claimant's cognitive and adaptive functioning, and to "rule out" whether Claimant has Autism. Dr. Beliz interviewed Claimant and Claimant's mother. He also administered the Wechsler Adult Intelligence Scale – IV, the Wide Range Achievement Test-4, the Autism Diagnostic Observation Schedule (ADOS), and the Vineland Adaptive Behavior Scales.

24. Dr. Beliz provided the following summary of the ADOS testing results:

In summary, there was no evidence for echolalia, speech abnormalities, or stereotyped or idiosyncratic uses [of] words. [Claimant] offered information spontaneously about her thoughts, feelings, and experiences. Her conversation was free-flowing and engaging. She provided reasonable accounts of routine events and expanded on several topics appropriately and without prompting. [Claimant] provided detailed information concerning her daily schedule. Her eye contact was good and facial expressions appropriate to the content or situation. She was able to talk about her affect and has insight about situations in which she feels out of place. The quality of her social response is limited and socially awkward. [Claimant] did not show hand and finger or other complex mannerisms. She did not display an excessive interest in a particular topic or thought.

25. Dr. Beliz provided the following diagnostic impression under the DSM-IV:

Axis I:	299.80	Pervasive Developmental Disorder Not Otherwise Specified
Axis II:	V71.09	No Diagnosis.
Axis III:		Please refer to medical record.

In reaching the diagnosis, Dr. Beliz indicated that Claimant's psychiatric records were not available for review. He deferred to Claimant's treating physician to make

additional Axis I diagnoses, such as for ADHD and OCD.

26. Dr. Beliz concluded that Claimant does not meet diagnostic criteria for Autism “due to sub threshold symptomatology.”⁶ He wrote that Claimant would benefit from assistance or accommodation in a school or work setting, noting that she would need assistance in the event she pursues semi-independent living. Dr. Beliz felt Claimant should also consider referral to a support group offering social and recreational opportunities.

27. According to the narrative in the “pertinent history” section of Dr. Beliz’s report, Claimant, when asked how the evaluation might help her, responded that her sister, who was in the Marines, told her that Claimant could get work at the military base if she was found to have a disability.

28. Based on the results of Dr. Beliz’s psychological evaluation, Regional Center determined that Claimant was not eligible for services.

WITNESS TESTIMONY AND OTHER EVIDENCE

The DSM-IV-TR

29. The parties referred to the diagnostic criteria set out in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) as the standard criteria with which to diagnose cognitive and mental disorders.⁷

30. According to the DSM-IV-TR, “[t]he essential feature of Autistic Disorder are the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests. Manifestations of the disorder vary greatly depending on the developmental level and chronological age of the individual.” However, according to the DSM-IV-TR, “[t]he disturbance must be manifest by delays or abnormal functioning in at least one (and often several) of the following areas prior to age 3 years: social interaction, language as used in social communication, or symbolic or imaginative play. . . . In most cases, there is no period of unequivocally normal development, although in perhaps 20% of cases parents report relatively normal development for 1 or 2 years. In such cases, parents may report that the child acquired a few words and lost these or seemed to stagnate developmentally. By definition, if there is a period of normal development, it cannot extend past age 3 years.”

⁶ Dr. Ballmaier explained that Dr. Beliz found Claimant had some characteristics, such as difficulty in social and peer relationships that would appear in a person who had Autism but that Claimant’s symptoms were not severe enough to qualify for an Autism diagnosis.

⁷ The DSM-IV-TR, published by the American Psychiatric Association, is a widely accepted manual, and the ALJ takes notice of its provisions for purposes of determining this case.

Testimony of Claimant's Mother

31. Claimant's mother testified at the hearing. She clarified that the college courses Claimant took while in high school were a basic introduction to college course, where Claimant received a "C" grade, a physical education course involving stretching and relaxation, a communications skills course and introduction to early childhood education courses, where Claimant received "D" and "F" grades. Claimant's mother explained that Claimant excelled when she was in the supportive environment of the NPS. Claimant could not compete with "normal kids." Claimant's mother believes that Claimant has been misdiagnosed throughout her life. For example, she points out that ADHD is a diagnosis commonly given to children who "don't fit in." Claimant's mother also points out that medication can impact a person's behavior. Claimant's mother asserts that Dr. Beliz's testing results are suspect because Dr. Beliz was distracted by cell phone conversations during the testing. Claimant's mother also believes that Dr. Beliz was going to perform follow-up testing but failed to do so. Claimant's mother wants Claimant to receive the assistance she needs to be successful.

LEGAL CONCLUSIONS

1. Throughout the applicable statutes and regulations (Welf. & Inst. Code, §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Where a claimant seeks to establish his or her eligibility for services, the burden is on the appealing claimant to demonstrate that the Service Agency's decision is incorrect. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

2. The standard of proof in this case requires proof to a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute (including the Lanterman Act) requires otherwise.

3(a). In order to be eligible for regional center services, Claimant must show that she has a qualifying developmental disability. Welfare and Institutions Code section 4512 defines "developmental disability" as:

a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

3(b). To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, Claimant must show that she has a “substantial disability.” California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) “Substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

3(c). In order to establish eligibility, an applicant’s substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of “developmental disability” (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are solely psychiatric disorders or solely learning disabilities. Therefore, a person with a “dual diagnosis,” that is, a developmental disability coupled with either a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or learning disability, alone or in some combination), and who does not have a developmental disability would not be eligible.

4. With regard to the issue of one’s eligibility for regional center services, “the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and regional center professionals’ determination as to whether an individual is developmentally disabled.” (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.) In *Mason*, the court focused on whether the claimant’s expert witnesses’ opinions on eligibility “sufficiently refuted” those expressed by the regional center’s experts that a claimant was not eligible. (*Id.*, at p. 1137.)

5. Claimant in this case has the burden of proving by a preponderance of the evidence that her evidence regarding eligibility is more persuasive than the Service Agency’s. She failed to do this. Claimant did not present an expert witness. The anecdotal

evidence from Claimant's mother did not refute the opinions of the regional center and other professionals. The record established that Claimant has been evaluated by numerous professionals concerning the behavioral and emotional problems she has encountered. None of these professionals, however, has diagnosed Claimant with a condition that would make Claimant eligible for services from NLACRC. The diagnoses Claimant received before age 18 indicate that Claimant has been diagnosed with psychiatric disorders. Although Claimant maintains that she is eligible for regional center services, she did not present any evidence to establish that she has a qualifying condition. Claimant has not refuted the opinion of the regional center professionals that she does not suffer from autism or any other developmental disability entitling her to regional center services. Claimant is therefore not eligible to receive regional center services, as set forth in factual finding numbers 1 through 31, and legal conclusion numbers 1 through 4.

ORDER

The Service Agency's determination that Claimant is not eligible for regional center services is upheld. Claimant's appeal of that determination is denied.

DATED: November 15, 2011

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.